

2.9 Review/Instructional Activities

The answers to the following questions and practice problems appear in Section 2.9.

A. Questions

Question #1

Using the subject matter index and table of contents in your copy of the Michigan Vehicle Code, locate the statutes governing the following traffic offenses. Read the statute and then mark whether each of the following offenses is a felony (F), misdemeanor (M), or civil infraction (CI).

- a. ____ Len had no operator's license in his possession while he was operating a motor vehicle.
- b. ____ Mary drove the wrong way on a one-way street.
- c. ____ Todd was cited for reckless driving.
- d. ____ Shannon disobeyed a traffic-control device.
- e. ____ Dave drove his car with defective, unsafe equipment.
- f. ____ Dawn violated the child restraint law.
- g. ____ Tom was driving down M-99 with an open container of beer.
- h. ____ Ann had a counterfeit certificate of insurance in the glove box of her car and was aware of this fact.
- i. ____ Cynthia was cited for careless driving.
- j. ____ Cathy was driving 65 miles per hour in a designated highway work area with a 45 mph speed limit.

Question #2

Mark each of these statements True (T) or False (F):

- a. ____ When a driver is found responsible for a civil infraction, that determination will appear on his or her criminal record.
- b. ____ If the MVC does not specify whether a traffic offense is a misdemeanor or a civil infraction, the offense is a misdemeanor.
- c. ____ A police officer cannot issue a citation for a civil infraction unless the infraction occurred in his or her presence.
- d. ____ An Ohio resident cited in Michigan for a traffic civil infraction must be taken, if he or she demands, to an available magistrate to answer the charge.

- e. ____ If the magistrate thinks that the defendant deserves it, he or she can impose a fine that is higher than the fine listed on the district court's schedule.
- f. ____ The magistrate can waive the fine for an equipment violation under MCL 257.683 if a police officer certifies that the defendant repaired the defective equipment before the appearance date on the citation.

Question #3

Choose the best answer for the following multiple choice questions.

1. A magistrate may arraign, accept pleas, and sentence defendants charged with misdemeanors under the MVC when the maximum penalty does not exceed:
 - a. 30 days
 - b. 60 days
 - c. 93 days
 - d. 1 year
2. When no penalty is specified for a misdemeanor violation of the MVC, the general maximum allowable penalties are:
 - a. \$100 fine
 - b. 90 days' imprisonment
 - c. \$500 fine
 - d. Both (a) and (b)

Question #4

For the following true-false questions, please mark each of the statements below as True (T) or False (F):

- a. ____ A magistrate may sentence a defendant on a plea of guilty or no contest to reckless driving (MCL 257.626).
- b. ____ A magistrate may sentence a defendant who pleads guilty to negligent homicide (MCL 750.324).
- c. ____ A magistrate must appoint an attorney to represent an indigent defendant at an informal hearing in a civil infraction case.
- d. ____ A magistrate may impose a jail sentence on a defendant found responsible for a civil infraction.
- e. ____ Responsibility for a civil infraction must be established beyond a reasonable doubt.

Question #5

Given the following citations, i.e., Michigan Compiled Laws (MCL) section numbers, locate the cited section in your copy of the Michigan Vehicle Code and describe the offense with which it deals. Indicate whether the offense is a misdemeanor (M) or a civil infraction (CI).

a. ____ MCL 257.255

Offense: _____

b. ____ MCL 257.321a

Offense: _____

c. ____ MCL 257.639

Offense: _____

d. ____ MCL 257.682

Offense: _____

e. ____ MCL 257.724

Offense: _____

Question #6

Find a local ordinance in at least one municipality within your judicial district that deals with each of the offenses listed below. Indicate the section number of the ordinance that applies.

a. Carrying too many persons on a bicycle.

b. Parking in a manner that obstructs traffic.

c. Overnight parking on a roadway.

d. Turning right on red at an intersection where prohibited.

Question #7

Indicate the physical location in your court for the following legal references. Are those references up to date?

- a. Michigan Compiled Laws Annotated (MCL)
- b. Local Ordinances
- c. Michigan Court Rules
- d. Michigan Uniform Traffic Code for Townships and Villages
- e. Michigan Vehicle Code (Secretary of State version)
- f. Michigan Compiled Laws Annotated (MCL)
- g. Michigan Reports

B. Practice Problems

For the following problems, you are to consider yourself the magistrate in the situation and answer the questions accordingly.

Practice Problem #1

Your first case of the day involves a 20-year-old driver charged with having an open container of beer in her car, in violation of MCL 257.624b. The defendant, who is pleading not guilty, is accompanied by an attorney. The attorney argues that since the defendant is pleading not guilty, you may not hear and decide the case because liquor law violations are misdemeanors, not civil infractions. What are your powers in this case? Explain your answer.

Practice Problem #2

You, the magistrate, receive a telephone call during the hours that your court is open for business. The only judge who is at the court is in the midst of a jury trial. The caller is a sheriff's deputy who has just arrested an accused person on an existing warrant for driving with a revoked license (MCL 257.904(1)) and operation of a vehicle while under the influence of liquor (MCL 257.625(1)). Both of these misdemeanor offenses are charged in a single complaint. The officer advised you that the accused and his attorney demand an immediate arraignment before you so that the defendant can plead guilty. What should you do? Explain your answer.

Practice Problem #3

Your court has received the court copy of a citation issued by the Motor Carrier Enforcement Division of the Michigan State Police. The citation alleges that a truck was operated in violation of size and weight restrictions. Specifically, the truck was weighed with the following results:

Axle No. 1 1,500 pounds overweight

Axle No. 2 2,000 pounds overweight

Axle No. 3 0 pounds overweight

Axle No. 4 2,500 pounds overweight

Where should you look to determine the amount of the fine?

What would the total fine be? Explain your answer.

Practice Problem #4

You are presiding over an informal hearing in which the charge is occupying two parking spaces in the Ford Township parking structure. The defendant argues that the right-hand wheels of her vehicle were on the line separating the parking spaces but that the vehicle was not blocking access to other vehicles. To determine whether the defendant's argument is valid, you must find a copy of the law prohibiting occupying two parking spaces. Where should you look? Explain your answer.

Practice Problem #5

A Wisconsin resident, cited at the scene of an accident, was brought before you after being cited. The defendant explained that, while driving on a snow-covered highway at 55 miles per hour, he had to slow down because a car stopped in front of him. Unable to stop in time, his car "rear-ended" the other vehicle. The defendant argues that because he was driving at the posted limit, he should not have been cited. You want to find the applicable statutes and explain the law to him. What provision applies to this case? Explain your answer.

2.8 Answer Key

A. Answers to Questions

Answers to Question #1

- a. Misdemeanor (MCL 257.311. See also MCL 257.901(1)).
- b. Civil Infraction (MCL 257.641).
- c. Misdemeanor (MCL 257.626. See also MCL 257.901(1)).
- d. Civil Infraction (MCL 257.611).
- e. Civil Infraction (MCL 257.683).
- f. Civil Infraction (MCL 257.710d).
- g. Misdemeanor (MCL 257.624a).
- h. Felony (MCL 257.329).
- i. Civil Infraction (MCL 257.626b).
- j. Civil Infraction (MCL 257.627).

Answers to Question #2

- F a. A civil infraction is not a crime. MCL 257.6a.
- T b. A MVC offense is a misdemeanor unless the statute defining the offense provides otherwise. MCL 257.901(1).
- F c. A police officer may issue a citation based on the officer's personal investigation of a traffic accident. The officer may also issue a citation based on his or her personal investigation of a complaint by someone who witnessed the alleged offense, if the prosecuting attorney approves in writing. MCL 257.742.
- T d. A nonresident of Michigan may demand to be taken immediately before a magistrate, if one is available. MCL 257.749.
- F e. In *People v Bogedain*, 185 Mich App 349 (1990), the Court of Appeals held that the magistrate may not impose fines and costs in excess of those listed on the court's schedule.
- T f. MCL 257.907(9) *requires* waiver of the fine in this case.

Answers to Question #3

1. (c) 93 days

MCL 600.8511(b) allows a magistrate to arraign, accept pleas, and sentence when the maximum permissible punishment does not exceed “93 days in jail or a fine, or both.” This authority *does not extend* to drunk driving offenses under MCL 257.625 and 257.625m or substantially corresponding local ordinances. In these cases, the magistrate may arraign and set bond only.

2. (d) both a & b

MCL 257.901(1) provides that a violation of the MVC is a misdemeanor unless defined as a felony or civil infraction. MCL 257.901(2) states that unless another penalty is provided, a person convicted of a misdemeanor under the MVC “shall be punished by a fine of not more than \$100 or imprisonment for not more than 90 days or both.”

Answers to Question #4

- T a. Reckless driving carries a maximum 90 day jail term and/or a \$100 fine. MCL 600.8511(b) allows a magistrate to arraign, accept pleas, and sentence for violations of the MVC when the maximum permissible punishment does not exceed “93 days in jail or a fine, or both.”
- F b. Negligent homicide is a two year misdemeanor. MCL 600.8511 does not authorize the magistrate to impose sentence in such cases.
- F c. Although the court must offer to appoint counsel for an indigent defendant if there is a possibility of a jail sentence, MCL 257.746(2) provides that the defendant may not be represented by an attorney at an informal hearing on a civil traffic infraction.
- F d. Civil infractions are not punishable by confinement to jail. See MCL 257.907.
- F e. Only a preponderance of the evidence (a 51 percent majority), and not proof beyond a reasonable doubt, is required to find a defendant responsible for a civil infraction. MCL 257.746(4) and MCL 257.747(5).

Answers to Question #5

- a. Operating a vehicle without registration or plates (M)
- b. Failing to answer a citation or comply with a judgment (M)
- c. Driving left of center (CI)
- d. Failing to stop for a stopped school bus (CI)
- e. Knowingly bypassing truck scales (M)

B. Solutions to Practice Problems

Solution to Practice Problem #1

Answer: You can conduct a first appearance of this defendant, in which she may enter her plea of not guilty, but you may neither try the case to determine her guilt or innocence, nor impose sentence.

Explanation: Under MCL 600.8513(1) (giving magistrates the authority to conduct a first appearance in all criminal and ordinance violation cases), you may arraign and accept the not guilty plea. You may not try the case and impose sentence, however, due to the restrictions in MCL 600.8511(b). Possessing an open container of intoxicating beverage in a vehicle is a misdemeanor punishable by a fine and/or imprisonment for not more than 90 days. MCL 257.901(2). MCL 600.8511(b) allows you to arraign and sentence upon *guilty* or *no contest* pleas in such cases, but you may not exercise these powers where the defendant pleads *not guilty*. Because the defendant here is pleading not guilty, MCL 600.8511(b) does not apply, and your district judge assumes jurisdiction over the trial and sentencing.

Solution to Practice Problem #2

Answer: Advise the deputy that you can arraign the defendant and set bond, but that you cannot accept the plea, or sentence the accused. You can schedule a hearing before the judge for acceptance of the guilty plea and sentencing.

Explanation: MCL 600.8511(b) specifically states that magistrates may arraign and set bond for offenses under the drunk driving statute (MCL 257.625), but prohibits them from sentencing upon pleas of guilty in these cases.

Notes: 1) Driving with license revoked is a 93 day misdemeanor for which magistrates can sentence on a plea of guilty under MCL 600.8511(b). See MCL 257.904(3). However, if both the DWLR and OUIL charges are contained on one complaint, the magistrate should not exercise the power to sentence on the DWLR charge because doing so might undercut the prosecutor's efforts to plea bargain with the defendant. If the DWLR and OUIL charges were contained on separate citations, however, the magistrate could arraign and sentence on the DWLR charge.

2) MCL 780.581, the so-called interim bond statute, may govern the situation in which a magistrate is not available. Subsection (2) of this statute allows release of the arrested person upon deposit of a sum of money as bond with the arresting police department or the deputy sheriff in charge of the county jail. However, subsection (3) provides that an intoxicated person cannot be released until he or she "is in a proper condition to be released." For more information, see 2 *Traffic Benchbook - Revised Edition* (MJJ, 1999), Section 2.6(B).

Solution to Practice Problem #3

Answer: MCL 257.724(3). The total fine would be \$195: \$15 for Axle No. 1 (.03 x 500 lbs), \$30 for Axle No. 2 (.03 x 1000 lbs), \$0 for Axle No. 3, and \$150 for Axle No. 4 (.06 x 2500 lbs).

Explanation: MCL 257.722 and MCL 257.724 set out weight requirements and prescribe civil fines for overweight vehicles, respectively. The fine schedule is stated in MCL 257.724(3). Note that you have to read the statute carefully to calculate the answer—the 3 cent fine applies to “each pound of excess over 1,000 pounds when the excess is 2,000 pounds or less,” making the first 1,000 pounds on Axles 1 and 2 not subject to fines; the 6 cent fine on Axle 4 applies to “each pound of excess load when the excess is over 2,000 pounds but not over 3,000 pounds,” making every excess pound subject to fines. Please also note that the total fine does not include any applicable court costs or state fees.

The statute gives the court discretion to impose the \$250 fine in MCL 257.907(3), where the vehicle did not exceed the total weight which would have been lawful for each unit by a proper distribution of the load on the various axles supporting each unit.

Note that the reference to “section 722” in the text of MCL 257.724(3) means section 722 of chapter 257 of the Michigan Compiled Laws. The section reference to “722” corresponds to the last three digits in the MCL reference.

Solution to Practice Problem #4

Answer: In the Ford Township Code.

Explanation: MCL 257.606(1)(a) allows local governments to regulate “the standing or parking of vehicles.” The Michigan Vehicle Code contains some provisions that govern parking, including MCL 257.672-257.675c. However, none of those sections address the issue of occupying two spaces.

Although they are not MVC provisions, MCL 257.941-257.943 also deal with parking.* These provisions authorize local governments to regulate and control traffic and parking. MCL 257.942(i) authorizes local governments, such as Ford Township, to adopt reasonable rules with respect to parking or parking areas.

*MCL 257.941 to MCL 257.943 are part of the Control of Traffic in Parking Areas Act.

Solution to Practice Problem #5

Answer: MCL 257.402, 257.627(1).

Explanation: MCL 257.627-257.633 govern speed restrictions, except for MCL 257.630 (regarding motor-driven cycles), which was repealed effective January 13, 1977. MCL 257.627(1), commonly known as the Basic Speed Law, requires a driver to drive (a) at a careful and prudent speed, neither greater nor less than what is reasonable and proper under the circumstances, and (b) no faster than a speed that will permit a stop within the assured, clear

*More discussion of speeding appears at Sections 5.4-5.5.

distance ahead.* Moreover, MCL 257.402, the “rear end” statute, states that the defendant is presumed negligent in circumstances such as those described in this case. The circumstances of this case strongly suggest that a speed of 55 miles per hour under the conditions that existed was unlawful under the Basic Speed Law.

Before you go to the next unit, turn to the first section of this unit and review the instructions. Make sure you have completed each step before moving on to Unit 3.